IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13333 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANTBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13333 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR RM CHAUHAN AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 06/11/2003

ORAL JUDGEMENT

1. By way of filing this Special Civil Application, the petitioner has challenged the order of detention passed against him by the District Magistrate, Anand, on

23.7.2003 in exercise of powers under sub-Section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act") directing the detention of the petitioner and the petitioner came to be detained in pursuance of the said order on 24th July, 2003.

2 The grounds served upon the petitioner and as placed on record reveal that the on 31st May 2003 the Mamlatdar, Sujitra, made a surprise checking in the presence of panchas and in the land bearing Block No.69 which belonged to the family of the petitioner, at 1.30 hours and it was found that in one room blue coloured kerosene 1760 liters is found, which is meant for ration-card holders through public distribution system at a subsidised price. The Mamlatdar, Sujitra, therefore, found that such quantity of kerosene was kept by the petitioner for selling the same in open market and to earn huge profit. The kerosene was sent to Forensic Science Laboratory and proper enquiry was held against the petitioner, in pursuance of which the order impugned came to be passed against the petitioner.

3. Learned Advocate Mr.H.R. Prajapati for the petitioner, learned AGP Ms.Mita Panchal, for the respondents No.1, 2 and 3 and learned Additional Central Government Standing Counsel Ms. Davawala for respondent No.4 were heard at length. The affidavit-in-reply filed on behalf of respondents nos.1 and 2 and as placed on record and the affidavit-in-reply filed on behalf of respondent no.4 are taken into consideration.

4. Out of various grounds raised on behalf of the petitioner and controverted by the respondents, it appears from the rival contentions that this matter can be disposed of and decided on the sole ground whether the detaining authority has applied its mind properly while passing the order.

5 The grounds served upon the petitioner disclose that a complaint came to be filed by the Deputy Mamlatdar against the petitioner in respect of above said illegal activity committed by the petitioner before the Police Station, Sujitra, on 23rd July, 2003. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was arrested on 23rd July, 2003 but since the offence registered against him was a bailable offence, he was likely to be released on bail and he is likely to indulge in said illegal activities. According to the contention raised on behalf

of the petitioner, this shows non-application of mind on the part of the detaining authority because the offence registered against the petitioner was undoubtedly a non-bailable offence. Though in the affidavit-in-reply the detaining authority has tried to explain that the petitioner came to be released on bail on 23rd July, 2003 and the order of detention came to be passed on the same day, the fact of release of the petitioner on bail could not be stated. Apart from this aspect, the detaining authority is always competent to reach to a subjective satisfaction even in non-bailable cases there was likelihood of the detenu to be released on bail but the detaining authority must rely upon the cogent material to come to that conclusion. However, in the present case the detaining authority came to the conclusion that the offence registered against the petitioner was bailable one and therefore he was likely to be released on bail. This reflects improper application of mind on the part of the detaining authority so as to vitiate the order and therefore further detention of the petitioner becomes bad in law. The detention order in question is required to be quashed and set aside only on this ground.

6. In the result, this Special Civil Application No.13333 of 2003 is allowed. The order impugned in this Special Civil Application passed on 23.7.2003 by the District Magistrate, Anand, under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS permitted.

(J.R. Vora, J.)

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